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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,600	07/30/2003	Patrick F. King	1024-002	8696
27820	7590	06/03/2004	EXAMINER	
WITHROW & TERRANOVA, P.L.L.C. P.O. BOX 1287 CARY, NC 27512			DEVORE, PETER T	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/630,600

Applicant(s)

KING ET AL.

Examiner

Peter T deVore

Art Unit

3751



-- Th MAILING DATE of this communication appears on th cover sheet with th correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 18-36 is/are rejected.
- 7) ☒ Claim(s) 17-30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Double Patenting***

Claims 18-30 are objected to under 37 CFR 1.75 as being substantial duplicates of claims 1-13. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5, 9, 10, 13-16, 18, 19, 22, 26, 27, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Judge.

The Judge reference discloses an apparatus comprising four sides foldably connected as claimed (see Figure 11), handles 34, and "attachments" 36. Regarding claims 14-16, the claimed methods are inherently performed during the normal use of the Judge apparatus. Regarding claims 14-16, the claimed methods are inherently performed during the normal use of the Judge device.

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Claims 1, 2, 5, 9-13, 18, 19, 22, and 26-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Russell.

The Russell reference discloses an apparatus comprising four sides foldable connected as claimed (see Figure 3), handles 26 and 27, "attachments" (top surfaces of the sides), and pegs 24, 28, and 29.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Judge in view of Boyle.

The Judge reference discloses an apparatus as discussed supra, but does not disclose third and fourth handles at the upper portions of the first and third sides. However, attention is directed to the Boyle reference, which discloses a similar apparatus having third and fourth handles 36 as claimed for improved flexibility as to from where the apparatus can be grasped. It would have been obvious to include third and fourth handles as claimed on the Judge device in view of Boyle for improved flexibility as to from where the apparatus can be grasped.

Claims 3, 4, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Judge in view of Hoerner.

The Judge reference discloses an apparatus as discussed supra, but does not disclose third and fourth handles at the lower portions of the first and third sides. However, attention is directed to the Hoerner reference, which discloses a similar apparatus having third and fourth handles 19 as claimed for improved flexibility as to from where the apparatus can be grasped. It would have been obvious to include third and fourth handles as claimed on the Judge device in view of Hoerner for improved flexibility as to from where the apparatus can be grasped.

Claims 7, 8, 24, and 25 rejected under 35 U.S.C. 103(a) as being unpatentable over Judge in view of Boyle as applied to claims 6 and 23, and further in view of Hoerner.

The Judge reference discloses an apparatus as discussed supra, but does not disclose fifth, sixth, and seventh handles at the lower portions of the first and third sides. However, attention is directed to the Hoerner reference, which discloses a similar apparatus having handles 19 at the lower portions of the sides as claimed for improved flexibility as to from where the apparatus can be grasped. It would have been obvious to include fifth, sixth, and seventh handles as claimed on the modified Judge device in view of Hoerner for improved flexibility as to from where the apparatus can be grasped.

Claims 1, 9, 13, 18, 26, 30-34, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Birkel in view of Miller.

The Birkel reference discloses an apparatus comprising four sides foldably connected as claimed (see Figure 2), "attachments" 21, and foldable bottom members 5-8, but does not disclose handles. However, attention is directed to the Miller

reference, which discloses a similar apparatus having handles 80 and 82 for improved flexibility as to from where the apparatus can be grasped. It would have been obvious to include handles as claimed on the Birkel device in view of Miller for improved flexibility as to from where the apparatus can be grasped. Regarding claims 32-34 and 36, the claimed methods are inherently performed during the normal use of the modified Birkel device.

Claims 11, 12, 28, 29, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Birkel in view of Miller as applied to claims 1, 18, and 32 above, and further in view of Russell.

The Birkel reference discloses an apparatus as discussed supra, but does not disclose pegs at the bottoms of the sides. However, attention is directed to the Russell reference, which discloses a similar apparatus having pegs at the bottoms of the sides for convenient anchoring of the apparatus. It would have been obvious to include pegs as claimed on the modified Birkel device in view of Russell for convenient anchoring of the apparatus. Regarding claim 35, the claimed method is inherently performed during the normal use of the modified Birkel device.

#### ***Allowable Subject Matter***

Claim 17 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Conclusion**


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Mulle reference discloses another similar apparatus.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter T deVore whose telephone number is (703) 306-5481. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (703) 308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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